IN THE SUPREME COURT OF MISSOURI

SC86952

STATE OF MISSOURI, ex rel. ST. LOUIS POST-DISPATCH, LLC

Relator,

VS.

THE HONORABLE JOHN F. GARVEY,

Respondent.

On a Petition for Writ of Prohibition or, in the Alternative, for Mandamus

SUBSTITUTE BRIEF OF RELATOR ST. LOUIS POST-DISPATCH, LLC

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JURISDICTIONAL STATEMENT

Relator St. Louis Post-Dispatch, LLC ("Post-Dispatch") brought this prohibition action in the Missouri Court of Appeals for the Eastern District to challenge an order entered by Respondent, the Honorable John F. Garvey ("Respondent"). Respondent is a circuit judge presiding over the case of *In the Interest of L.K.*, Cause No. 0522-JU00198, pending in the Juvenile Division of the Circuit Court of the City of St. Louis. The challenged order closed the proceedings to the public and denied Post-Dispatch reporters access to those proceedings, even though the juvenile was charged with a crime that would be a Class A felony if committed by an adult.

The appellate court granted a preliminary order in prohibition on March 4, 2005. In an opinion and order dated May 3, 2005, the appellate court granted in part and quashed in part the preliminary order, and prohibited Respondent from closing the "adjudicatory hearing," but not other proceedings in the case.

This Court should hold that the right of public access in juvenile proceedings where the juvenile is charged with a crime constituting a Class A or B felony extends to all the proceedings in the case. The Post-Dispatch requests that the Court enter a permanent writ of prohibition prohibiting Respondent from closing these proceedings to the public.

The jurisdiction of this Court to grant original remedial writs derives from Article V, Section 4.1 of the Constitution of Missouri and to hear cases on transfer after opinion derives from Article V, Section 10 of the Constitution of Missouri.

STATEMENT OF FACTS

Respondent is the presiding judge of the Juvenile Division of the Circuit Court of the City of St. Louis. Respondent is presiding over the juvenile case of *In the Interest of L.K.*, Cause No. 0522-JU00198. In the case, a juvenile is charged with Murder in the First Degree, in violation of Sections 565.020.1. (*See* Order Granting Juvenile's Motion to Close Juvenile Proceedings, ¶5, Appendix at A1). Upon information and belief, the charge against the juvenile relates to the alleged strangulation of the juvenile's younger sister during an argument. It is uncontested that the charge involved would constitute a Class A or B Felony if filed against an adult. (*Id.* ¶9, Appendix at A2).

In February 2005, in response to a motion filed on behalf of the juvenile offender, Respondent requested legal briefs from media organizations regarding whether to close the juvenile proceedings. On March 1, 2005, the St. Louis Post-Dispatch, LLC ("Post-Dispatch") filed a brief objecting to closure of the proceedings, basing its objections to closure chiefly on Section 211.171.6 of the Missouri Revised Statutes.

On March 3, 2005, Respondent granted the motion of the juvenile to close the proceedings. In granting the motion, Respondent noted that he was "well aware of Section 211.171.6 RSMo...." (*Id.* ¶11, Appendix at A3). However, Respondent disregarded the statute because he "believe[d] the legislature never intended its application in these circumstances wherein a person is both a victim and a mother of the Defendant." (*Id.*)

Later that same day, the Post-Dispatch filed an application for a Petition for Writ of Prohibition or, in the Alternative, for Mandamus in the Eastern District of the Missouri Court of Appeals.

On the following day, March 4, 2005, the appellate court entered a preliminary order in prohibition that prohibited Respondent from conducting closed proceedings in the juvenile matter, pending further order of the appellate court.

On March 29, 2005, without further argument or briefing, Division 3 of the appellate court, in an Opinion authored by the Honorable Clifford H. Ahrens, and concurred in by the Honorable Robert G. Dowd, Jr. and the Honorable Mary K. Hoff, granted in part and quashed in part the preliminary order in prohibition ("March 29 Opinion"). The March 29 Opinion held that the statute required the "adjudicatory hearing" to be open to the public, but did not require any other juvenile hearing or proceeding to be open.

On April 7, 2005, the Post-Dispatch filed its Motion for Rehearing. On April 13, 2005, the Post-Dispatch filed its Application for Transfer to the Missouri Supreme Court pursuant to Mo. Sup. Ct. R. 83.02.

On May 3, 2005, the appellate court issued a new opinion (the "Opinion"), withdrawing its March 29 Opinion. The new Opinion is identical to the March 29 Opinion, except for the addition of footnote number 2. That footnote did not materially change the March 29 Opinion or any of the issues pertinent herein.

In its Opinion, the appellate court held that Mo. Rev. Stat. § 211.171.6 does not provide the general public with the right to attend "all proceedings" in a juvenile court,

even when the juvenile is charged with conduct constituting a class A or B felony, but instead only mandates public access to "the hearing." According to the appellate court, "pursuant to the language of section 211.171, the public cannot be excluded from *the adjudicatory hearing* where a child is accused of conduct which, if committed by an adult, would be considered to be a class A or B felony." (Opinion, p. 3, Appendix at A7) (Emphasis added).

The Opinion of May 3, 2005 rendered the Post-Dispatch's pending Motion for Rehearing and Application for Transfer moot. Therefore, the Post-Dispatch filed its second Application for Transfer on May 17, 2005. The appellate court denied the Post-Dispatch's Application for Transfer on June 30, 2005. The Post-Dispatch applied for transfer to the Missouri Supreme Court on July 12, 2005.

This Court granted the Post-Dispatch's application for transfer on August 30, 2005.

POINTS RELIED ON

I. THE ST. LOUIS POST-DISPATCH IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM CLOSING THE PROCEEDINGS IN THIS CASE, BECAUSE MO. REV. STAT. § 211.171.6 MANDATES THAT SUCH PROCEEDINGS BE OPEN, IN THAT THE JUVENILE HAS BEEN CHARGED WITH ACTS THAT WOULD BE A CLASS A OR B FELONY IF COMMITTED BY AN ADULT.

Mo. Rev. Stat. § 211.171.6

Pulitzer Publishing Co. v. Transit Casualty Co., 43 S.W.3d 293 (Mo. banc. 2001)

State ex rel. Pulitzer, Inc. v. Autrey, 19 S.W.3d 710 (Mo. App. E.D. 2000)

Press-Enterprise Co. v. Superior Court of California II, 478 U.S. 1 (1986)

ARGUMENT

I. THE ST. LOUIS POST-DISPATCH IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM CLOSING THE PROCEEDINGS IN THIS CASE, BECAUSE MO. REV. STAT. § 211.171.6 MANDATES THAT SUCH PROCEEDINGS BE OPEN, IN THAT THE JUVENILE HAS BEEN CHARGED WITH ACTS THAT WOULD BE A CLASS A OR B FELONY IF COMMITTED BY AN ADULT.

In defining the scope of the public's right to attend juvenile proceedings, the Missouri Juvenile Code provides:

The general public shall be excluded and only such persons admitted as have a direct interest in the case or in the work of the court *except in cases* where the child is accused of conduct which, if committed by an adult, would be considered a class A or B felony; or for conduct which would be considered a Class C felony, if the juvenile has been formerly adjudicated for the commission of two or more unrelated acts which would have been Class A, B or C felonies, if committed by an adult.

Mo. Rev. Stat. § 211.171.6, Appendix at A11.

By this provision, the legislature has made clear its intention that the public have access to juvenile proceedings where juveniles are charged with serious offenses or constitute repeat offenders.

In the current case, there is no dispute that the juvenile involved is accused of conduct which, if committed by an adult would be considered a class A or B felony. Accordingly, under the plain, unambiguous language of the statute, the Respondent erred and abused his discretion in prohibiting public access to the proceedings.

Further, contrary to the qualification created by the Respondent, the statute contains no limitation or exception where there is a person who is both a victim and a parent of the juvenile offender. Similarly, the public's right of access under the statute is not limited to the adjudicatory hearing to the exclusion of other hearings. As such, the appellate court's Opinion limiting the public's right of access to the adjudicatory hearing is unsupportable.

This Court should hold that all juvenile proceedings involving acts that would be considered class A or B felonies if committed by an adult are open to the public, and it should enter its order prohibiting Respondent from closing the proceedings.

Because the issue presented involves a question of statutory construction, the standard for reviewing the trial court's order is *de novo*. *See*, *e.g.*, *Cook v. Barnard*, 100 S.W.3d 924, 927 (Mo. App. W.D. 2003).

A. THE POST-DISPATCH HAS STANDING TO CHALLENGE RESPONDENT'S ORDER BY PROCEEDINGS SEEKING A WRIT OF PROHIBITION.

Because the Post-Dispatch raises important constitutional rights and has no other legal remedy to protect those rights, this Court may preserve those rights by extraordinary relief in the form of a writ of prohibition. *See, e.g., State ex rel. Pulitzer, Inc. v. Autrey*, 19 S.W.3d 710, 712 (Mo. App. E.D. 2000)¹; *see also Pulitzer Publishing Co. v. Transit Casualty Co.*, 43 S.W.3d 293, 299 (Mo. banc. 2001) (holding that a writ is a proper way to challenge a court order restricting the public's right of access to court documents, although under the circumstances of that case, an appeal was also proper). As recognized by this Court, where the right sought to be protected "is one owing to the entire public, the interest necessary to establish standing to seek a writ is exceedingly low." *Pulitzer Publishing Co. v. Transit Casualty Co.*, 43 S.W.3d at 299.

¹ Autrey involved both a procedural and substantive challenge to a trial court's closure order. The Post-Dispatch does not challenge the procedure employed by Respondent before entering his order. In fact, in compliance with Autrey, Respondent provided the Post-Dispatch with notice and an opportunity to be heard on the matter. Further, though substantively insufficient to justify closure of the proceedings, Respondent complied with the procedural requirement of Autrey that he fully articulate his reasons for closing the proceedings.

In a motion to dismiss, Respondent repeats a standing argument raised, but rejected in the appellate court, namely that the Post-Dispatch is not legally qualified to do business in Missouri and therefore barred from bringing an action in a Missouri court to protect its rights and that of the public. Respondent first raised this issue in the appellate court upon discovering that the Post-Dispatch was not a *Missouri* limited liability company as alleged in the petition it filed seeking prohibition. However, the matter was quickly resolved, when "in its response [the Post-Dispatch] established that it is a *Delaware* limited liability company qualified to do business in the State of Missouri." (Opinion at p. 1, n. 1; Appendix at A5) (Emphasis added). Records readily available at the Missouri Secretary of State's internet site verify the legal capacity of the Post-Dispatch. (Certificate of Good Standing, Appendix at A23).

B. MO. REV. STAT. § 211.171.6 DOES NOT LIMIT PUBLIC ACCESS TO ONLY THE "ADJUDICATORY HEARING."

Section 211.171.6 opens juvenile proceedings in cases involving serious felonies and repeat offenders. In its Opinion, the appellate court held that the requirement of open proceedings as set forth in this statute is limited to the "adjudicatory hearing." Even though section 211.171.6 does not even use the terms "the hearing" or "adjudicatory hearing," the appellate court based its holding upon the use of the word "hearing" in section 211.171.1. The appellate court held that the term, "the hearing" in subsection 1 of the statute means that section 211.171 *in its entirety* -- including subsection 6 requiring

open proceedings in cases involving serious felonies and repeat offenders -- applies only to the "adjudicatory hearing" in a juvenile case.

Nowhere does section 211.171 ever even use the word "adjudicatory hearing." Moreover, the word "hearing," used in its singular form in subsection 1, was plainly not intended to limit the *entire* statute to the adjudicatory phase of a juvenile case. Instead, the term was intended to refer to the entirety of the case. Even if the word "hearing" as used in subsection 1 was intended to refer exclusively to the "adjudicatory hearing," nothing in subsection 6, mandating openness in cases involving juveniles charged with serious offenses, justifies the conclusion that such openness is limited to the "adjudicatory hearing," and not to any other "hearing" in the case.

Indeed, the various subparts of section 211.171 use differing terminology and use the term "hearing" in a sense that seems to indicate that section 211.171, as a whole, has a much broader application than to solely the adjudicatory hearing. For instance, subsection 3 provides: "The current foster parents of a child . . . shall be provided with notice of . . . any hearing to be held with respect to the child." (Emphasis added). It is doubtful that the legislature intended to limit this notice requirement to only the adjudicatory hearing. Subsection 7 provides: "The practice and procedure customary in proceedings in equity shall govern all proceedings in the juvenile court" (Emphasis added). There is no basis for concluding that this requirement is limited to adjudicatory hearings. Subsection 8 allows the victim to submit a statement to the court, which statement may include information in the nature of a victim impact statement. It seems reasonable that such a statement would be more likely considered during the dispositional

hearing, rather than in the adjudicatory hearing; and that the statute does not confine the victim's rights to only the adjudicatory hearing. Finally, subsection 2 provides: "The *hearing* may . . . be adjourned from time to time." Based on this provision, an appellate court broadly interpreted the statute to allow an adjudicatory hearing and a dispositional hearing all at one time, holding that the terminology "the hearing" as used in section 211.171 does not mandate multiple hearings or require the judge to conduct one single hearing. *In the Interest of A.S.*, 487 S.W.2d 589 (Mo. App. E.D. 1972). Thus, implicit in this holding is the recognition that the term "hearing" as used in section 211.171 refers to multiple parts of a juvenile case, not just an "adjudicatory hearing."

Nothing in the statute suggests that by having used the term "hearing" in the first subsection of the statute, that the entire statute -- especially subsection 6 mandating open proceedings in instances of serious criminal acts or repeat offenders -- was intended to be limited to the adjudicatory hearing. Nothing in section 211.171.6 supports the conclusion that the mandated openness was intended to be limited to the adjudicatory hearing.

C. THE HISTORY BEHIND MO. REV. STAT. § 211.171.6 SHOWS

THAT THE LEGISLATURE INTENDED THAT ALL

PROCEEDINGS INVOLVING JUVENILE OFFENDERS CHARGED

WITH SERIOUS FELONIES WOULD BE OPEN TO THE PUBLIC,

NOT JUST THE "ADJUDICATORY HEARING."

Where courts are uncertain about the meaning of the language in a statute, they should give consideration to the object the legislature seeks to accomplish. *See, e.g.*,

State ex. rel. Nixon v. Quik Trip Corp., 133 S.W.3d 33, 37 (Mo. banc 2004). In this case, the Post-Dispatch believes that the statute is plain and unambiguous in mandating the openness of the proceedings. However, the history surrounding the statute shows, too, that the legislature intended complete openness of the proceedings involving serious or repeat juvenile offenders, just as in cases involving adults.

The legislature added the provision in Mo. Rev. Stat. § 211.171.6 requiring open proceedings in cases of juveniles charged with serious offenses and repeat offenders in 1995. At that time, considerable support had developed for "loosening the confidentiality in criminal cases involving juveniles." *See* Kim Bell, *County Wish: Tighter Laws on Juveniles*, St. Louis Post-Dispatch, Jan. 5, 1994, at 1B (attached in Appendix at A26). Indeed, the provision mandating openness seems to have resulted in large part from a St. Louis homicide occurring in early 1995.

On January 24, 1995, while legislators were considering revamping the Juvenile Code, a fifteen year old male student, Michael Taylor, raped, beat and murdered a fifteen year old female student, Christine Metzer, after lying in wait in a girls' bathroom at McCluer North High School in north St. Louis. Taylor had only recently transferred to the school. Unbeknownst to anyone at the school, he had a juvenile record, which included charges of going into a girl's bathroom at another school. According to an advocate for changing the law, St. Louis County Prosecuting Attorney, Robert McCulloch, '[t]he tragedy ... had a great impetus on changing the juvenile code." Joe Hollemon and Bill Lhotka, *Case Spurred Revamping of Juvenile System*, St. LOUIS POST-DISPATCH, Jan. 14, 1996, at 4D (attached in Appendix at A24).

House Bill 174, which added the language that forms the subject of this appeal, was overwhelmingly adopted by both houses of the Missouri General Assembly and signed by the governor on June 12, 1995.

The legislative history surrounding House Bill 174 is sparse. However, the Bill Summary provides the best available legislative pronouncement of what the Bill was intended to do. Consistent with the position of Relators here, and contrary to the holding of the appellate court that "section 211.171 does not provide the general public with the right to attend all proceedings in juvenile court," the pertinent portion of the summary states:

Related to juvenile court records, the bill: ... (3) Makes public the record of the proceedings in juvenile court if the child has been accused of an offense which, if committed by an adult, would be a class A or B felony; or a class C felony, if the child has a prior adjudication of 2 or more unrelated acts which would be classified as A, B or C felonies....

Bill Summary, H.B. 174, 88th Gen. Assem., First Reg. Sess. (Mo. 1995) at p. 2, available at www.house.state.mo.us/bills95/hb174.htm (attached in Appendix at A13). This description of the Bill making public the *proceedings* related to juveniles obviously contradicts the limitations placed on the statute in the court of appeals. The *proceedings* are open, not just the adjudicatory hearing.

The Bill Summary for the corresponding, though somewhat different Senate Bill, SB6, is of similar import insofar as material to this case:

SB 6 – This act modifies the requirements for access to juvenile court proceedings and records. The general public is no longer excluded from juvenile court proceedings if the juvenile is accused of acts analogous to a Class A, B or C felony involving the destruction of property in excess of seven hundred and fifty dollars.

Current Bill Summary, S.B. 0006, 88th Gen. Assem., First Reg. Sess. (Mo. 1995) available at www.senate.mo.gov/95info/bills/SB006.htm (attached in Appendix at A22).

Missouri has not been not alone in taking action to open up its juvenile courts. According to a report issued by the U.S. Department of Justice in July 1996, ten states had recently changed their laws to promote greater transparency of the proceedings and "[i]n all, 22 States require or permit open juvenile court hearings of cases involving either juveniles charged with violent or other serious offenses or juveniles who are repeat offenders." State Responses to Serious and Violent Juvenile Crime, a report published by the U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and 1996), Delinquency Prevention, ch. 5. 63 (July available at at www.ncjrs.org/txtfiles/statresp.txt (hereinafter, "DOJ Report").

In discussing the reasons for these changes, the DOJ Report noted:

A system that rehabilitates and protects minors from the stigma of youthful indiscretions was not a problem when those indiscretions were of a minor nature. However, as juvenile crime became more serious, community protection and the public's right to know began to replace confidentiality as a bedrock principle.

DOJ Report, ch. 5, at 61-62. That Report also noted:

The National Council of Juvenile and Family Court Judges (NCJFCJ) recently declared that:

Traditional notions of secrecy and confidentiality should be re-examined and relaxed to promote public confidence in the court's work. The public has a right to know how courts deal with children and families. The court should be open to the media, interested professionals and students, and, when appropriate, the public, in order to hold itself accountable, and encourage greater community participation.

DOJ Report, ch. 5, at 63.

D. LIMITING PUBLIC ACCESS TO THE ADJUDICATORY
HEARING IS UNSUPPORTED BY, AND WILL NOT ADVANCE,
HISTORICAL RATIONALES FOR CLOSING JUVENILE
PROCEEDINGS.

While juvenile proceedings have for some time been closed to the public and considered an exception to the rule of presumptive openness of all court proceedings, the legislature has now determined that the public policy of the State is better served by opening juvenile proceedings to public scrutiny where juveniles are accused of acts that would constitute serious felonies if committed by adults. The holding of the appellate court discriminates between certain types of hearings involving juveniles charged with

serious crimes, making some open and some closed. There is no logical basis for such a holding.

In analyzing this issue, the policy reason for closing juvenile proceedings in the first instance warrants consideration. Those policy reasons include, most notably, promoting rehabilitation by protecting against the disclosure of the identity of the juvenile, in order to prevent social stigma that might follow from disclosure of one bad mistake. See Joshua M. Dalton, At the Crossroads of Richmond and Gault: Addressing Media Access to Juvenile Delinquency Proceedings Through a Functional Analysis, 28 SETON HALL L. REV. 1155, 1181 (1998) ("the interest relied upon time and time again by courts in justifying closed juvenile proceedings can be summarized in one word rehabilitation. The state argues that publicity will create a stigmatizing trauma that will, in turn, destroy the juvenile's chances to rehabilitate himself or herself, thereby effectively eliminating the child's chance for a fresh start."²).

While the rationales for secrecy arguably were advanced by closing the *entire* proceeding, thereby protecting the juvenile entirely from public scrutiny, closing the entire proceeding is not an option here, because the legislature has clearly found an overriding public interest in openness where serious felonies are involved. Once a

² As pointed out in the preceding argument, courts, legislatures and the law enforcement community have become circumspect about the notion of preserving confidentiality in order to promote rehabilitation, at the expense of public scrutiny, especially in cases of serious or repeat offenders.

hearing is open to the public -- and especially the adjudicatory hearing – the rationale for closing other juvenile proceedings becomes moot and serves absolutely no purpose. In this case, the appellate court has drawn a seemingly arbitrary line, and stopped public access at the adjudication hearing, without any discussion of the purpose for that line and without any statutory or public policy justification. The decision in this case has resulted in an illogical result.

Courts should assume that the legislature intended to enact legislation which was reasonable and did not produce illogical, unjust, oppressive or absurd consequences. *See Cohen v. Poelker*, 520 S.W.2d 50, 52 (Mo. banc 1975). Holding that one form of hearing is open, while others are not, seemingly creates such illogical and absurd consequences, especially in light of the avowed policy for closing juvenile proceedings in the first instance.

Indeed, the holding of the appellate court effectively precludes Post-Dispatch and members of the public from attendance at any proceedings for certification of the child to stand trial as an adult under Mo. Rev. Stat. § 211.071 and from attendance at the dispositional hearing under Mo. Rev. Stat. § 211.181. Accordingly, the public would have access to proceedings wherein the juvenile might be found guilty of first degree murder, but would be denied access to the proceedings as to the appropriate disposition on such charges. The legislature could not have intended that the public would have access to the proceedings wherein a juvenile is adjudicated delinquent based on acts criminal if committed by an adult, but no access to the proceedings in which the court

determines whether to certify the juvenile to stand trial as an adult or in which the appropriate remedy and sanction is meted out.

E. THE AMENDMENT TO SUPREME COURT RULE 117.02, SCHEDULED TO TAKE EFFECTIVE ON JANUARY 1, 2006, DOES NOT NEGATE THE PROVISIONS OF MO. REV. STAT. § 211.171.6.

In a motion to remand, Respondent contends that this Court should remand this case to the appellate court in light of an amendment to Supreme Court Rule 117.02 scheduled to take effect on January 1, 2006 (attached in Appendix at A12). Essentially, Respondent argues that the appellate court might decide that the rights asserted by the Post-Dispatch in these proceedings have been mooted by this rule amendment. There are several problems with this argument.

First, like the standing argument, this argument was already raised and rejected in the appellate court. The appellate court stated:

Respondent also attempts to argue that impending changes to Rule 117.02 provide the juvenile court with greater discretion to close hearings to the public. Respondent cites Rule 117.02, and the changes thereto effective January 1, 2006. However, the changes to the rule apply specifically to a juvenile found to be in need of care and treatment for neglect or lack of care under section 211.031.1(1) and for the termination of parental rights pursuant to sections 211.442 to 211. 487. The rule does not address hearings involving children alleged to have violated state law,

as is the case here, and therefore, we do not believe the argument is persuasive.

(Opinion at 4-5, Appendix at A8-A9). Plainly, the appellate court has already decided the matter raised by Respondent in his motion to remand. Respondent never explains how remand, without direction by this Court would have any impact. Obviously, this Court is in the best position to analyze what its rules mean, and how they interact with legislative pronouncements that are alleged to be inconsistent with the rules. Moreover, Respondent's motion to remand filed after transfer of the case seems somewhat inconsistent with the precepts of Supreme Court Rule 83.04 that no response to an application for transfer should be filed unless ordered by the Court.

Second, the appellate court was right in its interpretation of amended Rule 117.02. This is made clear by the Comment following the amended rule, which cites to statutory provisions dealing with the termination of parental rights as being the "source" for the rule.

Third, it is doubtful that this Court intended to disregard the legislative pronouncement mandating open proceedings in cases of serious or repeat juvenile offenders. If anything, it seems that the amendments to the Juvenile Court Rules scheduled to take effect on January 1, 2006, are designed to enhance, not restrict, the openness and transparency of juvenile proceedings in light of recent legislative enactments, including the enactment of Mo. Rev. Stat. § 211.319. *See also* Mo. Sup. Ct. R. 122.02 "Open Records."

Finally, even if the Rule conflicts with the statute, Respondent's argument that the Rule must prevail because only procedural matters are involved is mistaken. "Procedural laws prescribe a method for enforcing rights or obtaining redress for their invasion [citation omitted]. Substantive laws, on the other hand, define and regulate those rights." *State ex. rel. Union Electric Co. v. Barnes*, 893 S.W.2d 804, 804 (Mo. banc. 1995). The public's right of access to court proceedings is not merely a matter of procedure; it is a substantive right. *See, e.g., Pulitzer Publishing Co. v. Transit Casualty Co.*, 43 S.W.3d at 299.

F. LIMITING PUBLIC ATTENDANCE TO A SINGLE ADJUDICATORY HEARING CONTRADICTS FEDERAL AND STATE CONSTITUTIONAL LAW.

The Supreme Court of the United States has held that the press and general public have a First Amendment right of access to criminal trials. *Globe Newspaper Co. v. Superior Court for the County of Norfolk*, 457 U.S. 596, 603 (1982). More importantly, the Court has extended the right of access to criminal trials to include and encompass pretrial proceedings. *Press-Enterprise Co. v. Superior Court of California II*, 478 U.S. 1, 15 (1986). The appellate courts of this State have also upheld the right to access pre-trial hearings in holding that the public and the press must be granted access to a venue hearing in a criminal matter. *State ex rel. Pulitzer Inc. v. Autrey*, 19 S.W.3d 710 (Mo. App. E.D. 2000).

In order to justify closure of court proceedings, a court must articulate an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. *Press-Enterprise Co v. Superior Court of California*, 464 U.S. 501, 510 (1984); *see also Pulitzer Publishing Co. v. Transit Casualty Co.*, 43 S.W.3d at 299. Contrary to that requirement, no policy rationales or "overriding interests" can be advanced that explain how the juvenile is protected from social stigma or helped in his or her rehabilitation, if the public and media are shunned from pre-trial and dispositional hearings, but allowed access to the "adjudicatory hearing." In fact, in the present case, the appellate court found there were no overriding interests to justify closing the proceedings. (Opinion at 5, Appendix at A9).

Once the public policy reasons for closing juvenile proceedings are erased, the appellate court should have returned to the long established rules favoring public access. The statute in question does not limit openness to one hearing and certainly does not mention an "adjudicatory hearing." In fact, looking at the statute as a whole it is clear that the statute is not limited to the "adjudicatory hearing." Additionally, there are no policy reasons to support denying access to pre-trial matters and to proceedings other than the adjudication. To the contrary, denying access to pre-trial criminal matters flies in the face of well-established federal and state law.

CONCLUSION

This Court should hold that Mo. Rev. Stat. § 211.171.6 requires openness of all juvenile proceedings involving class A and B felonies, and not just the adjudicatory hearing, and it should enter its order prohibiting Respondent from closing the proceedings herein.

Respectfully submitted,

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